THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.10851 of 2006

DATED: 26.12.2006

BETWEEN:

Godavarthi Sri Hari

…Petitioner

and

Government of Andhra Pradesh,
Department of Endowments and others.

…Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.10851 of 2006

ORDER:

The second respondent-Devasthanam notified a public auction for grant of leasehold rights of its lands in an extent of Ac.1.90 cents in Taamarada, Penugonda Mandal, West Godavari District.

The Writ Petition assails the notification.

The petitioner claims to be the lessee of the land in question. It is admitted that the land belongs to the second respondent-Devasthanam. The petitioner states that he is paying the lease amount as determined by the second respondent from time to time without any arrears.

The petitioner also admits that the second respondent got issued a notice under Rule 5(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (the Rules) on 25.02.2005, that the petitioner's lease stood determined and he should hand over the possession of the leased property to the second respondent, failing which, he would be evicted invoking the process under Sections 83 to 86 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act) treating him as an encroacher, in an order passed under Section 83 (4) of the Act. The petitioner got issued a reply through his lawyer to the notice under Form No.1 on 22.04.2005, claiming to be a landless poor person. The reply sent on behalf of the

petitioner, dated 22.04.2005, is silent as to the manner, circumstances and instruments by which he became a lessee in the first instance, the period for which a formal lease was entered into or renewed from time to time, as the case may be, and as to all other facts, which permit an ascertainment of the petitioner's status as a lawful tenant, the duration of the tenancy and the current position.

The petitioner sent up another representation on 16.08.2005 to the second respondent reiterating the same facts and sought declaration as a landless poor person.

Even in the Writ Petition, the petitioner does not plead any facts as to when he was granted a lease of the Endowment Lands in the first instance, the period for which the lease was given, when the competent authority approved the lease, whether the lease was granted after a process of public auction as required under the Rules, and any other facts which permit an inference that the petitioner is a lawful cultivating tenant of the lands in question.

Endowment agricultural Lands and the grant of lease thereof is governed by the provisions of the Act and supplemented by the regulatory regime under the Rules. There is no discretion consecrated either in the Commissioner of Endowments or in any other Official of the department to grant leases or even approve the leases contrary to the specific mandate of the Act and the statutory Rules. The Rules mandate that lease of agricultural lands of Endowment and Charitable Institutions should be only by the method of public auction, unless the competent authority is satisfied, for reasons to be recorded in writing, that the lease should be granted otherwise than by public auction and in the interest of the Religious Institutions or the Endowment concerned. Interest of the persons in occupation or any other interest, other than the interest of the Endowment Institution, is extraneous

material under the provisions of the Rules. It would be a very rare situation where leases are required to be entered into otherwise than through the process of public auction, in the interest of a Religious Institution or Endowment. In such legal architecture, the petitioner's claim that he is a tenant, on the basis of a vague acknowledgement of that status by a non formal communication of the Manager or the Assistant Commissioner, would be of no avail.

Extravagant and impermissible certification by even Endowment Officials would not create rights or legitimate expectations in favour of persons in relation to Endowment lands, contrary to the provisions of the Act and the Rules. If the petitioner has not been awarded a lease in accordance with the provisions of the Act and the Rules and after approval by the competent authority as mandated, he is not a cultivating tenant. Unless he is a cultivating tenant satisfying the qualifications under Section 82 (1) of the Act, he would not be entitled to be considered as a landless poor person, as the expression is defined in Section 82 of the Act. Not every landless poor person *per se* is entitled to the benefits under Section 82 of the Act. To derive such benefits, the person should have been a lawful cultivating tenant of the Endowments Lands for a period of six years as on the date of the commencement of the Act. Encroachers or persons in physical possession of Endowment Lands, the beneficiaries of the negligence of Endowment officials would not be entitled to be considered as lawful cultivating tenants.

In the above circumstances, the pleadings or the averments at the bar do not establish even a *prima facie* case that the petitioner is a lawful cultivating tenant of the lands of the second respondent in an extent of Ac.1.90 cents and that he was such a cultivating tenant for a period of six years continuously (as specified in Section 82 (1) and (2)

of the Act). There is no declaration of any competent authority that the petitioner is a landless poor person. In the circumstances, the petitioner appears to have no *locus* to interdict the conduct of auction by or on behalf of the second respondent for grant of leasehold rights of its agricultural lands. The relief *in specie* as sought in the Writ Petition cannot therefore be granted.

In the counter affidavit, the second respondent has categorically stated that the petitioner had an approved lease only for the period from 2002-03 to 2004-05, and therefore, he was not considered as entitled to the benefits under Section 82 of the Act. Paragraph 5 of the counter affidavit also asserts that the petitioner was not even willing to enhance the rent. The counter categorically denies the assertion of the petitioner that he is entitled to continue in possession of the lands. There is nothing in the Writ Petition or in the averments urged on behalf of the writ petitioner that rebut the defence to the writ petition asserted by the second respondent.

The Writ Petition, therefore, deserves to be dismissed on merits with liberty to the petitioner to make appropriate representations/applications before the appropriate/competent authorities, if he so desires, claiming and producing material in support of his claim that he is a lawful cultivating tenant of the lands of the second respondent-Devasthanam, having lawful lease in accordance with the provisions of the Act and the Rules, continuously with the status as such tenant for a period of six years as on the date of the Act, having other qualifications as entitle him to be considered as a landless poor person under Section 82 of the Act. On such claim being established on cogent material and evidence, the respondents or the competent authority may consider the petitioner's application for being a landless poor person. As on date, there is no material to

substantiate the petitioner's claim that he is a landless poor person.

The Writ Petition is accordingly dismissed. No costs.

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(GODA RAGHURAM, J)

26.12.2006
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